



February 9, 2005

## HOUSE BILL No. 1646

DIGEST OF HB 1646 (Updated February 3, 2005 11:01 am - DI 97)

**Citations Affected:** IC 23-2; IC 27-8; noncode.

**Synopsis:** Viatical settlements. Removes a viatical settlement contract or an interest in a viatical settlement contract that is entered into before March 17, 2000, from the definition of "security" for purposes of the law regulating securities. Removes a provision specifying that the insured has a catastrophic or life threatening condition for purposes of regulation of a viatical settlement. Prohibits certain actions related to viatical settlement contracts. Requires a viatical settlement broker, a viatical settlement agent, and a viatical representative to obtain a viatical settlement intermediary license. Specifies requirements for a viatical settlement intermediary license.

**Effective:** July 1, 2005.

**Ripley, Fry**

January 19, 2005, read first time and referred to Committee on Insurance.  
February 8, 2005, amended, reported — Do Pass.

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HB 1646—LS 7467/DI 97+



February 9, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1646

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 23-2-1-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, unless  
3 the context otherwise requires:

4 (a) "Commissioner" means the securities commissioner provided for  
5 in section 15(a) of this chapter.

6 (b) "Agent" means an individual, other than a broker-dealer, who  
7 represents a broker-dealer or issuer in effecting or attempting to effect  
8 purchases or sales of securities. A partner, officer, or director of a  
9 broker-dealer or issuer or a person occupying a similar status or  
10 performing similar functions is an agent only if the person effects or  
11 attempts to effect a purchase or sale of securities in Indiana. "Agent"  
12 does not include an individual who represents an issuer in:

13 (1) effecting transactions in a security exempted by section  
14 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this  
15 chapter;

16 (2) effecting transactions exempted by section 2(b) of this  
17 chapter;

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(3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in Indiana; or

(4) effecting transactions in Indiana limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o).

(c) "Broker-dealer" means a person engaged in the business of effecting offers, sales, or purchases of securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer with respect to the offer or sale of the issuer's own securities;

(3) a bank, savings institution, or trust company; or

(4) a person who has no place of business in Indiana if the person effects transactions in Indiana exclusively with:

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940, as in effect on December 31, 1990), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, whether or not the offeror or any of the offerees is then present in Indiana.

(d) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise or representation or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of those terms as applied by or defined in courts of law or equity. These terms are not limited to common law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "Issuer" means a person who issues or proposes to issue a security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or person performing similar functions or of the fixed, restricted management, or unit type. The term "issuer" means the

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person or persons performing the acts and assuming the duties of depository or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(g) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(h) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(i)(1) "Sale" or "sell" means a contract of sale of, contract to sell, or disposition of, a security, or interest in a security for value.

(2) "Offer" or "offer to sell" means an attempt or offer to dispose of, or solicitation of an offer to purchase, a security, or interest in a security for value.

(3) "Transaction" and "transactions" include the meanings of "sale", "sell", "offer", "offer to sell", and "purchase".

(4) "Purchase" means an acquisition, direct or indirect, of a security or an interest in a security for value.

(5) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(6) A purported gift of assessable stock is considered to involve an offer and sale.

(7) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(8) The terms defined in this subsection do not include:

(i) a bona fide secured transaction in or loan of outstanding securities;

(ii) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; or

(iii) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in

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such exchange and partly for cash.

(j) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names, as in effect on December 31, 1990.

(k) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, an interest in a limited liability company or limited liability partnership and any class or series of an interest in a limited liability company or limited liability partnership (including any fractional or other interest in an interest in a limited liability company or limited liability partnership), certificate of interest or participation in a profit-sharing agreement, commodity futures contract, option, put, call, privilege, or other right to purchase or sell a commodity futures contract, margin accounts for the purchase of commodities or commodity futures contracts, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract **entered into after March 16, 2000**, any fractional or pooled interest in a viatical settlement contract **entered into after March 16, 2000**, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease, an automatic extension or rollover of an existing security, or, in general, an interest or instrument commonly known as a "security", or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant, option, or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

(1) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period;

(2) a contract or trust agreement under which money is paid pursuant to a charitable remainder annuity trust or a charitable remainder unitrust (described in Section 664 of the Internal Revenue Code), or a pooled income fund (described in Section 642(c)(5) of the Internal Revenue Code) or an annuity contract under which the purchaser receives a charitable contribution deduction under Section 170 of the Internal Revenue Code; or

(3) an interest in a limited liability company or limited liability partnership if the person claiming that the interest is not a security can prove that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability

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partnership; or

**(4) a viatical settlement contract or a fraction or pooled interest in a viatical settlement contract:**

**(A) entered into before March 17, 2000; and**

**(B) subject to IC 27-8-19.8.**

(l) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(m) Corporations are "affiliated" during a period of time when either is the owner of shares of the other representing and possessing fifty percent (50%) or more of the total combined voting power of all classes of stock issued by the other corporation and then outstanding and entitled to vote.

(n) "Investment adviser" means a person who holds himself out to be an investment adviser, or who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues and promulgates analyses or reports concerning securities. "Investment adviser" does not include any of the following:

(1) A bank, savings institution, or trust company.

(2) A lawyer, an accountant, an engineer, or a teacher whose performance of these services is solely incidental to the practice of the person's profession.

(3) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of the broker-dealer's business as a broker-dealer and who receives no special compensation for them.

(4) A publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, by whatever means communicated, that does not render advice on the specific investment situation of individual clients.

(5) An investment adviser representative.

(6) A person who is an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(7) A person who is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3).

(8) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2).

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(9) Other persons the commissioner may by rule or order designate.

(o) "Transferable share" means a security representing an equity interest in a corporation or business trust, but does not include the shares of open-end investment companies (as defined by the Investment Company Act of 1940, as in effect on December 31, 1990).

(p) A "qualified transfer agent" means:

(1) a bank whose deposits are insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation; or

(2) a person, independent of the issuer, approved by the commissioner by regulation or by individual order in specific cases.

(q) "Investment adviser representative" means a person, except a person in a clerical or ministerial position:

(1) who is employed by or associated with an investment adviser registered under this chapter; or

(2) who has a place of business located in Indiana and is employed by or associated with a person required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3); and

(3) who:

(A) makes recommendations or otherwise renders advice regarding securities;

(B) manages accounts or portfolios of clients;

(C) determines recommendations or advice that should be given regarding securities;

(D) solicits, offers, or negotiates the sale of or sells investment advisory services; or

(E) supervises employees who perform a duty described in this subsection.

(r) "Accredited investor" means a person who is within any of the following categories, or who the issuer reasonably believes is within any of the following categories, at the time of the sale of securities to the person:

(1) A person who meets the definition of "accredited investor" (as defined under the Securities Act of 1933 in 17 CFR 230.215), and in any other rule or regulation modifying the definition adopted by the Securities and Exchange Commission as in effect on December 31, 1990.

(2) A person to whom an offer or sale may be made without registration pursuant to section 2(b)(8) or 2(b)(9) of this chapter.

(3) Any other person the commissioner may designate by rule or

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1 order.

2 (s) "Federal covered security" refers to a security described as a  
3 covered security in Section 18(b) of the Securities Act of 1933 (15  
4 U.S.C. 77r).

5 (t) "Viatical settlement contract" means an agreement for the  
6 purchase, sale, assignment, transfer, devise, or bequest of a portion of  
7 a death benefit or ownership of a life insurance policy or contract for  
8 consideration that is less than the expected death benefit of the life  
9 insurance policy or contract. The term does not include the following:

10 (1) A loan by an insurer under the terms of a life insurance policy,  
11 including a loan secured by the cash value of a policy.

12 (2) An agreement with a bank, savings bank, savings and loan  
13 association, credit union, or other licensed lending institution that  
14 takes an assignment of a life insurance policy as collateral for a  
15 loan.

16 (3) The provision of accelerated death benefits by an insurer to an  
17 insured under the provisions of a life insurance contract.

18 (4) Agreements between an insurer and a reinsurer.

19 (5) An agreement by a person who enters into not more than one  
20 (1) such agreement in any five (5) year period to purchase a life  
21 insurance policy or contract for the transfer of a life insurance  
22 policy for a value that is less than the expected death benefit.

23 SECTION 2. IC 23-2-1-17.1 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17.1. (a) Whenever it  
25 appears to the commissioner that a person has engaged in or is about  
26 to engage in an act or practice constituting a violation of this chapter  
27 or a rule or order under this chapter, the commissioner may investigate  
28 and may issue, with or without a prior hearing, orders and notices as  
29 the commissioner determines to be in the public interest, including  
30 cease and desist orders, orders to show cause, and notices. After notice  
31 and hearing, the commissioner may enter an order of rescission,  
32 restitution, or disgorgement, including interest at the rate of eight  
33 percent (8%) per year, directed to a person who has violated this  
34 chapter or a rule or order under this chapter **and who does not sustain**  
35 **the burden of proof that the person did not know, and in the**  
36 **exercise of reasonable care could not have known, of the violation.**  
37 In addition to all other remedies, the commissioner may bring an action  
38 in the name and on behalf of the state against the person and any other  
39 person participating in or about to participate in a violation of this  
40 chapter, to enjoin the person from continuing or doing an act furthering  
41 a violation of this chapter and may obtain the appointment of a receiver  
42 or conservator. Upon a proper showing by the commissioner, the court

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1 shall enter an order of the commissioner directing rescission,  
 2 restitution, or disgorgement to a person who has violated this chapter  
 3 or a rule or order under this chapter **and who does not sustain the**  
 4 **burden of proof that the person did not know, and in the exercise**  
 5 **of reasonable care could not have known, of the violation.** In a court  
 6 proceeding, the commissioner may apply for and on due showing be  
 7 entitled to have issued the court's subpoena requiring the appearance  
 8 of a defendant and the defendant's employees or agents and the  
 9 production of documents, books, and records as may appear necessary  
 10 for the hearing of the petition, to testify and give evidence concerning  
 11 the acts or conduct or things complained of in the action. In the action,  
 12 the circuit or superior courts shall have jurisdiction of the subject  
 13 matter. The court may not require the commissioner to post a bond.

14 (b) Upon the issuance of an order or notice by the commissioner  
 15 under subsection (a), the commissioner shall promptly notify the  
 16 respondent that it has been issued and the reasons it has been issued  
 17 and that upon the receipt of a written request the matter will be set  
 18 down for a hearing to commence within forty-five (45) business days  
 19 after receipt of the request unless the respondent consents to a later  
 20 date. If no hearing is requested and none is ordered by the  
 21 commissioner, the order will remain in effect until it is modified or  
 22 vacated by the commissioner. If a hearing is requested or ordered, the  
 23 commissioner, after notice of an opportunity for hearing may modify  
 24 or vacate the order or extend it until final determination.

25 (c) In a proceeding in a circuit or superior court under this section,  
 26 the commissioner shall be entitled to recover all costs and expenses of  
 27 investigation to which the commissioner would be entitled in an  
 28 administrative proceeding under section 16(d) of this chapter, and the  
 29 court shall include the costs in its final judgment.

30 (d) The commissioner shall notify the insurance commissioner when  
 31 an administrative action or civil proceeding is filed under this section.

32 (e) **The commissioner may not institute an administrative**  
 33 **proceeding or a court action under this chapter more than five (5)**  
 34 **years after the date of the purchase or sale that is the subject of the**  
 35 **administrative proceeding or court action.**

36 SECTION 3. IC 23-2-1-19 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) A person who  
 38 offers or sells a security in violation of this chapter, and who does not  
 39 sustain the burden of proof that the person did not know and in the  
 40 exercise of reasonable care could not have known of the violation, is  
 41 liable to any other party to the transaction who did not knowingly  
 42 participate in the violation or who did not have, at the time of the

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transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(1) the value of the security when the buyer disposed of the security; and

(2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

(1) violates section 8, 12.1(b), 14, or 26 of this chapter;

(2) employs a device, scheme, or artifice to defraud a person; or

(3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of section 12.1(b) or 26 of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the

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1 person, a person occupying a similar status or performing similar  
 2 functions, an employee of a person who materially aids in the conduct  
 3 creating the liability, and a broker-dealer or agent who materially aids  
 4 in the conduct are also liable jointly and severally with and to the same  
 5 extent as the person, unless the person who is liable sustains the burden  
 6 of proof that the person did not know, and in the exercise of reasonable  
 7 care could not have known, of the existence of the facts by reason of  
 8 which the liability is alleged to exist. There is contribution as in cases  
 9 of contract among the several persons liable.

10 (e) A tender specified in this section may be made at any time  
 11 before entry of judgment.

12 (f) A cause of action under this statute survives the death of a person  
 13 who might have been a plaintiff or defendant.

14 (g) Action under this section shall be commenced within three (3)  
 15 years after discovery by the person bringing the action of a violation of  
 16 this chapter, **but in no event more than five (5) years after the date**  
 17 **of the purchase or sale that is the subject of the action**, and not  
 18 afterwards. No person may sue under this section:

19 (1) if that person received a written offer, before suit and at a time  
 20 when the person owned the security, to refund the consideration  
 21 paid together with interest on that amount from the date of  
 22 payment to the date of repayment, with interest on:

23 (A) interest-bearing obligations to be computed at the same  
 24 rate as provided on the security; and

25 (B) all other securities at the rate of eight percent (8%) per  
 26 year;

27 less the amount of any income received on the security, and the  
 28 person failed to accept the offer within thirty (30) days of its  
 29 receipt; or

30 (2) if the person received an offer before suit and at a time when  
 31 the person did not own the security, unless the person rejected the  
 32 offer in writing within thirty (30) days of its receipt.

33 (h) No person who has made or engaged in the performance of a  
 34 contract in violation of this chapter or a rule or order under this  
 35 chapter, or who has acquired a purported right under a contract with  
 36 knowledge of the facts by reason of which its making or performance  
 37 was in violation, may base a suit on the contract.

38 (i) A condition, stipulation, or provision binding a person acquiring  
 39 a security to waive compliance with this chapter or a rule or order  
 40 under this chapter is void.

41 (j) The rights and remedies specifically prescribed by this chapter  
 42 are the only rights and remedies created by this chapter, but are in

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addition to any other rights or remedies that exist at law or in equity.

SECTION 4. IC 27-8-19.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "applicant" refers to ~~an applicant~~ **a person that is a:**

(1) **viatical settlement intermediary that applies for a viatical settlement intermediary license; or**

(2) **viatical settlement provider that applies for a viatical settlement provider license;**

under this chapter.

SECTION 5. IC 27-8-19.8-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.7. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.**

SECTION 6. IC 27-8-19.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "insured" refers to an individual ~~who has a catastrophic or life threatening illness or condition~~ **whose life is the subject of insurance under a life insurance policy or certificate.**

SECTION 7. IC 27-8-19.8-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. As used in this chapter, "viatical representative" means a person that offers or sells a viatical settlement purchase agreement.**

SECTION 8. IC 27-8-19.8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.3. As used in this chapter, "viatical settlement agent" means a person that:

(1) **represents a viatical settlement provider; and**

(2) **solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.**

SECTION 9. IC 27-8-19.8-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.7. As used in this chapter, "viatical settlement intermediary" means the following:**

(1) **A viatical settlement agent.**

(2) **A viatical settlement broker.**

(3) **A viatical representative.**

SECTION 10. IC 27-8-19.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6.3. As used in this chapter, "viatical settlement purchase agreement" means an agreement through which a person other than a viatical settlement provider**

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**purchases or is assigned an interest in a:**

**(1) viaticated policy; or**

**(2) viatical settlement contract.**

SECTION 11. IC 27-8-19.8-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.5. **In addition to the licensure requirement specified in section 9(1) of this chapter,** the following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:

(1) A viatical settlement broker.

(2) A ~~person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator:~~ **agent.**

SECTION 12. IC 27-8-19.8-8.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.6. The following are exempt from the licensing ~~requirement under IC 27-8-19.8-8.5:~~ **requirements of sections 8.5 and 9(1) of this chapter:**

(1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.

(2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.

(3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:

(A) An employer.

(B) An officer or employee of an employer.

(C) A trustee of an employee trust plan.

SECTION 13. IC 27-8-19.8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. ~~After December 31, 1998,~~ A person may not act as a:

**(1) viatical settlement intermediary unless the person holds an unexpired viatical settlement intermediary license; or**

**(2) viatical settlement provider unless the person holds an unexpired viatical settlement provider license;**

issued under this chapter.

SECTION 14. IC 27-8-19.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) An applicant

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1 must do the following to obtain a license as a viatical settlement  
2 ~~provider~~: **under this chapter:**

- 3 (1) Apply for the license on forms prescribed by the department.
- 4 (2) Provide information required by the department.
- 5 (3) Pay the license fee.

6 (b) ~~The An~~ application for a viatical settlement provider license  
7 must include the name of each officer, member, or employee of the  
8 **viatical settlement provider** applicant who will be authorized by the  
9 **viatical settlement provider** applicant to act as a viatical settlement  
10 provider under the license if issued to the **viatical settlement provider**  
11 applicant.

12 (c) The department shall adopt rules under IC 4-22-2 to set the  
13 **viatical settlement provider** licensing fee required by this section.

14 SECTION 15. IC 27-8-19.8-10.1 IS ADDED TO THE INDIANA  
15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2005]: **Sec. 10.1. (a) The commissioner shall,**  
17 **not later than December 31, 2005, designate a viatical settlement**  
18 **intermediary examination for use in licensing of a viatical**  
19 **settlement intermediary under this chapter. Part of the**  
20 **examination must cover life insurance aspects of viatical**  
21 **settlements.**

22 (b) Except as provided in subsection (c), a viatical settlement  
23 intermediary must pass the viatical settlement intermediary  
24 examination designated under subsection (a) with a score of at least  
25 seventy percent (70%) as a condition of licensure as a viatical  
26 settlement intermediary under this chapter.

27 (c) A viatical settlement intermediary who:

- 28 (1) holds an insurance producer license with a life  
29 qualification under IC 27-1-15.6-7 for more than one (1) year;  
30 and

- 31 (2) is in good standing with the department;

32 is exempt from the life insurance part of the viatical settlement  
33 intermediary examination designated under subsection (a).

34 (d) A viatical settlement intermediary who passes a viatical  
35 settlement intermediary examination that is:

- 36 (1) designated by the state department of insurance of another  
37 state; and
- 38 (2) determined by the commissioner to be substantially  
39 similar to the viatical settlement intermediary examination  
40 designated under subsection (a);

41 with a score of at least seventy percent (70%) has satisfied the  
42 requirement of subsection (b).

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SECTION 16. IC 27-8-19.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. The department shall investigate an applicant and issue a license to the applicant if the department finds all of the following:

(1) The applicant is competent and trustworthy and intends to act in good faith as a viatical settlement provider **or viatical settlement intermediary**.

(2) The applicant has a good business reputation.

(3) The applicant has had the experience, training, or education to qualify the applicant as a viatical settlement provider **or viatical settlement intermediary**.

(4) If the applicant is a corporation, or limited liability corporation, it is either:

(A) incorporated under Indiana law; or

(B) authorized to do business in Indiana.

SECTION 17. IC 27-8-19.8-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. **(a) Except as provided in subsection (b), a viatical settlement intermediary who is not a resident of Indiana may receive a nonresident viatical settlement intermediary license under this chapter if the viatical settlement intermediary:**

**(1) is licensed as a resident and in good standing in the viatical settlement intermediary's home state, as determined by the commissioner;**

**(2) has submitted to the department an application for licensure; and**

**(3) has complied with this chapter.**

**(b)** The department may not issue a license to an applicant who is not an Indiana resident unless the applicant does either of the following:

(1) Files and maintains with the department a written designation of an agent for service of process.

(2) Files with the department the applicant's written irrevocable consent that any action against the applicant may be begun against the applicant by the service of process on the department.

SECTION 18. IC 27-8-19.8-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. A **viatical settlement provider** license issued under this chapter authorizes all officers, members, and employees of the license holder designated under section 10(b) of this chapter to act as viatical settlement providers under the **viatical settlement provider** license.

SECTION 19. IC 27-8-19.8-15 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) A **viatical**  
 2 **settlement provider** license issued or renewed under this chapter  
 3 expires on July 1 after its issuance or renewal.

4 (b) A viatical settlement provider may renew a **viatical settlement**  
 5 **provider** license by:

6 (1) applying for renewal on forms prescribed by the department;  
 7 and

8 (2) paying the renewal fee.

9 (c) The department shall adopt rules under IC 4-22-2 to do the  
 10 following:

11 (1) Set the renewal fee required by this section.

12 (2) Set a date before July 1 and before which receipt of a **viatical**  
 13 **settlement provider** license renewal application can be  
 14 processed without a lapse in the **viatical settlement provider**  
 15 license.

16 (d) A viatical settlement provider that submits an application for  
 17 renewal after the date set under subsection (c)(2):

18 (1) is not entitled to have the **viatical settlement provider** license  
 19 renewed before July 1; and

20 (2) may not act as a viatical settlement provider until the  
 21 department issues the **viatical settlement provider** license  
 22 renewal, if the department is unable to process the renewal before  
 23 July 1.

24 SECTION 20. IC 27-8-19.8-15.1 IS ADDED TO THE INDIANA  
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 2005]: Sec. 15.1. (a) A **viatical settlement**  
 27 **intermediary license must be renewed on July 1 of the fourth year**  
 28 **after the license is issued or renewed.**

29 (b) A **viatical settlement intermediary** may renew a **viatical**  
 30 **settlement intermediary license** by:

31 (1) **applying for renewal on forms prescribed by the**  
 32 **department;**

33 (2) **paying the renewal fee of twenty dollars (\$20); and**

34 (3) **completing, before applying for renewal under subdivision**  
 35 **(1), at least ten (10) hours of credit in continuing education**  
 36 **courses approved under subsection (e), including at least:**

37 (A) **seven (7) hours of life insurance;**

38 (B) **two (2) hours of viatical settlement; and**

39 (C) **one (1) hour of ethics;**

40 **credit in continuing education courses.**

41 (c) The department shall adopt rules under IC 4-22-2 to set a  
 42 date before July 1 and before which receipt of a viatical settlement

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intermediary license renewal application can be processed without a lapse in the viatical settlement intermediary license.

(d) A viatical settlement intermediary that submits an application for renewal after the date set under subsection (c):

(1) is not entitled to have the viatical settlement intermediary license renewed before July 1; and

(2) may not act as a viatical settlement intermediary until the department issues the viatical settlement intermediary license renewal, if the department is unable to process the renewal before July 1.

(e) The commissioner shall, not later than December 31, 2005, approve continuing education courses for a viatical settlement intermediary license renewal.

(f) Continuing education courses described in subsection (b)(3) and approved under IC 27-1-15.7 for renewal of an insurance producer license may also be applied to the requirement for renewal of a viatical settlement intermediary license set forth in subsection (b)(3).

(g) A viatical settlement intermediary that submits an application for renewal before the date set under subsection (c) may request, and the commissioner may grant, an extension of time in which to attain compliance with the continuing education requirement set forth in subsection (b)(3).

(h) A viatical settlement intermediary license remains in effect after the viatical settlement intermediary files a request under subsection (g) until the commissioner makes a decision concerning the request.

(i) If the commissioner denies a viatical settlement intermediary's request made under subsection (g), the viatical settlement intermediary must complete the continuing education requirements set forth in subsection (b)(3) within ninety (90) days after the commissioner notifies the viatical settlement intermediary of the denial.

SECTION 21. IC 27-8-19.8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. The department may at any time require a viatical settlement provider or an applicant for a **viatical settlement provider** license to disclose fully the identity of all of the viatical settlement provider's or applicant's officers, employees, partners, and stockholders.

SECTION 22. IC 27-8-19.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) When the department reasonably considers it necessary for the protection of the

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1 public, the department may examine the business and other affairs of  
 2 a viatical settlement provider or ~~an~~ **a viatical settlement provider**  
 3 applicant.

4 (b) The department may order a viatical settlement provider or ~~an~~  
 5 **a viatical settlement provider** applicant to produce records, books,  
 6 files, or other information reasonably necessary to ascertain whether  
 7 the viatical settlement provider or ~~the~~ **viatical settlement provider**  
 8 applicant has violated or is violating the law or otherwise has acted or  
 9 is acting contrary to the public interest.

10 (c) The viatical settlement provider or **viatical settlement provider**  
 11 applicant shall pay the expenses of an examination conducted under  
 12 this section.

13 SECTION 23. IC 27-8-19.8-19 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. After a hearing  
 15 under IC 4-21.5, the department may suspend, revoke, or refuse to  
 16 renew a viatical settlement provider's **or viatical settlement**  
 17 **intermediary's** license, or impose a civil penalty, or both, if the  
 18 department finds any of the following:

19 (1) There was a misrepresentation in the application for the  
 20 license.

21 (2) The:

22 (A) **viatical settlement intermediary is untrustworthy or**  
 23 **incompetent to act in the viatical settlement intermediary's**  
 24 **capacity as a viatical settlement agent, viatical settlement**  
 25 **broker, or viatical representative; or**

26 (B) viatical settlement provider is untrustworthy or  
 27 incompetent to act as a viatical settlement provider.

28 (3) The viatical settlement provider demonstrates a pattern of  
 29 unreasonable payments to viators.

30 (4) The viatical settlement provider **or viatical settlement**  
 31 **intermediary** has been convicted of, or pleaded guilty or nolo  
 32 contendere to, an offense the definition of which includes  
 33 fraudulent acts as an element of the offense regardless of whether  
 34 a judgement has been entered by the court.

35 (5) The viatical settlement provider **or viatical settlement**  
 36 **intermediary** no longer meets the requirements for initial  
 37 licensure.

38 (6) The viatical settlement provider has failed to honor the  
 39 contractual obligations of a viatical settlement contract.

40 (7) The viatical settlement provider **or viatical settlement**  
 41 **intermediary** has violated this chapter.

42 SECTION 24. IC 27-8-19.8-24 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. A viatical  
 2 settlement provider shall obtain the following before entering into a  
 3 viatical settlement contract:

4 (1) If the viator is the insured, a written statement from a licensed  
 5 attending physician that the insured is of sound mind and under  
 6 no constraint or undue influence.

7 (2) A document signed by the viator and witnessed by two (2)  
 8 disinterested witnesses in which the viator does the following:

9 (A) Consents to the viatical settlement contract.

10 (B) **If the insured has a catastrophic or life threatening**  
 11 **illness or condition**, acknowledges the catastrophic or life  
 12 threatening illness **or condition**.

13 (C) Represents that the viator has a full and complete  
 14 understanding of the viatical settlement contract.

15 (D) Represents that the viator has a full and complete  
 16 understanding of the benefits of the life insurance policy.

17 (E) Acknowledges that the viator has entered into the viatical  
 18 settlement contract freely and voluntarily.

19 (F) Discloses the identity of any person that served as a  
 20 viatical settlement broker in connection with the viatical  
 21 settlement contract.

22 (3) A document in which the insured consents to the release of the  
 23 insured's medical records.

24 SECTION 25. IC 27-8-19.8-24.9 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24.9. (a) The viatical  
 26 settlement provider or viatical settlement ~~broker~~ **intermediary** may  
 27 contact the insured for the purpose of determining the health status of  
 28 the insured not more than:

29 (1) one (1) time every three (3) months for an insured with a life  
 30 expectancy of more than one (1) year; or

31 (2) one (1) time every month for an insured with a life expectancy  
 32 of not more than one (1) year.

33 (b) Contacts made with an insured under subsection (a) must be  
 34 made by mail unless the parties agree to another method of contact.

35 SECTION 26. [EFFECTIVE JULY 1, 2005] (a) **A viatical**  
 36 **settlement intermediary shall comply with IC 27-8-19.8-9(1), as**  
 37 **amended by this act, and IC 27-8-19.8-10.1, as added by this act,**  
 38 **not later than December 31, 2006.**

39 (b) **This SECTION expires December 31, 2008.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1646, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 11, line 5, delete "broker" and insert **"intermediary"**.

Page 11, line 6, delete "broker" and insert **"intermediary"**.

Page 11, delete lines 15 through 42, begin a new paragraph and insert:

"SECTION 6. IC 27-8-19.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "insured" refers to an individual ~~who has a catastrophic or life threatening illness or condition~~ **whose life is the subject of insurance under a life insurance policy or certificate.**

SECTION 7. IC 27-8-19.8-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. As used in this chapter, "viatical representative" means a person that offers or sells a viatical settlement purchase agreement.**

SECTION 8. IC 27-8-19.8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.3. As used in this chapter, "viatical settlement agent" means a person that:

- (1) represents a viatical settlement provider; and**
- (2) solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.**

SECTION 9. IC 27-8-19.8-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.7. As used in this chapter, "viatical settlement intermediary" means the following:**

- (1) A viatical settlement agent.**
- (2) A viatical settlement broker.**
- (3) A viatical representative.**

SECTION 10. IC 27-8-19.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6.3. As used in this chapter, "viatical settlement purchase agreement" means an agreement through which a person other than a viatical settlement provider purchases or is assigned an interest in a:**

- (1) viaticated policy; or**
- (2) viatical settlement contract.**

SECTION 11. IC 27-8-19.8-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.5. **In addition to the**

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**licensure requirement specified in section 9(1) of this chapter**, the following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:

- (1) A viatical settlement broker.
- (2) A ~~person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator:~~ **agent.**

SECTION 12. IC 27-8-19.8-8.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.6. The following are exempt from the licensing ~~requirement under IC 27-8-19.8-8.5:~~ **requirements of sections 8.5 and 9(1) of this chapter:**

- (1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.
- (2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.
- (3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:
  - (A) An employer.
  - (B) An officer or employee of an employer.
  - (C) A trustee of an employee trust plan."

Page 12, delete lines 1 through 5.

Page 12, line 9, delete "broker" and insert "**intermediary**".

Page 12, line 10, delete "broker" and insert "**intermediary**".

Page 12, line 33, delete "broker" and insert "**intermediary**".

Page 12, line 34, delete "broker" and insert "**intermediary**".

Page 12, line 37, delete "broker must" and insert "**intermediary must**".

Page 12, line 37, delete "broker examination" and insert "**intermediary examination**".

Page 12, line 40, delete "broker" and insert "**intermediary**".

Page 12, line 41, delete "broker" and insert "**intermediary**".

Page 13, line 5, delete "broker" and insert "**intermediary**".

Page 13, line 6, delete "broker" and insert "**intermediary**".

Page 13, line 7, delete "broker" and insert "**intermediary**".

Page 13, line 11, delete "broker" and insert "**intermediary**".

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Page 13, line 21, delete "broker." and insert **"intermediary."**

Page 13, line 25, delete "broker." and insert **"intermediary."**

Page 13, line 32, delete "broker" and insert **"intermediary"**.

Page 13, line 34, delete "broker license" and insert **"intermediary license"**.

Page 13, line 34, delete "broker:" and insert **"intermediary:"**.

Page 13, line 36, delete "broker's" and insert **"intermediary's"**.

Page 14, line 40, delete "broker" and insert **"intermediary"**.

Page 14, line 42, delete "broker" and insert **"intermediary"**.

Page 15, line 1, delete "broker" and insert **"intermediary"**.

Page 15, line 14, delete "broker" and insert **"intermediary"**.

Page 15, line 15, delete "broker" and insert **"intermediary"**.

Page 15, line 16, delete "broker" and insert **"intermediary"**.

Page 15, line 18, delete "broker" and insert **"intermediary"**.

Page 15, line 20, delete "broker" and insert **"intermediary"**.

Page 15, line 21, delete "broker" and insert **"intermediary"**.

Page 15, line 26, delete "broker" and insert **"intermediary"**.

Page 15, line 30, delete "broker" and insert **"intermediary"**.

Page 15, line 32, delete "broker" and insert **"intermediary"**.

Page 15, line 37, delete "broker" and insert **"intermediary"**.

Page 15, line 38, delete "broker" and insert **"intermediary"**.

Page 15, line 40, delete "broker's" and insert **"intermediary's"**.

Page 15, line 41, delete "broker" and insert **"intermediary"**.

Page 16, line 2, delete "broker" and insert **"intermediary"**.

Page 16, line 27, delete "broker's" and insert **"intermediary's"**.

Page 16, line 33, delete "broker" and insert **"intermediary"**.

Page 16, line 34, delete "as a viatical settlement broker;" and insert **"in the viatical settlement intermediary's capacity as a viatical settlement agent, viatical settlement broker, or viatical representative;"**.

Page 16, line 40, delete "broker" and insert **"intermediary"**.

Page 17, line 3, delete "broker" and insert **"intermediary"**.

Page 17, line 7, delete "broker" and insert **"intermediary"**.

Page 17, delete lines 8 through 32, begin a new paragraph and insert:

"SECTION 24. IC 27-8-19.8-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

(1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.

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(2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:

(A) Consents to the viatical settlement contract.

(B) **If the insured has a catastrophic or life threatening illness or condition**, acknowledges the catastrophic or life threatening illness **or condition**.

(C) Represents that the viator has a full and complete understanding of the viatical settlement contract.

(D) Represents that the viator has a full and complete understanding of the benefits of the life insurance policy.

(E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.

(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(3) A document in which the insured consents to the release of the insured's medical records.

SECTION 25. IC 27-8-19.8-24.9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24.9. (a) The viatical settlement provider or viatical settlement ~~broker~~ **intermediary** may contact the insured for the purpose of determining the health status of the insured not more than:

(1) one (1) time every three (3) months for an insured with a life expectancy of more than one (1) year; or

(2) one (1) time every month for an insured with a life expectancy of not more than one (1) year.

(b) Contacts made with an insured under subsection (a) must be made by mail unless the parties agree to another method of contact.

SECTION 26. [EFFECTIVE JULY 1, 2005] **(a) A viatical settlement intermediary shall comply with IC 27-8-19.8-9(1), as amended by this act, and IC 27-8-19.8-10.1, as added by this act, not later than December 31, 2006.**

**(b) This SECTION expires December 31, 2008."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1646 as introduced.)

RIPLEY, Chair

Committee Vote: yeas 11, nays 0.

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